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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re T.M., et. al., Persons Coming Under
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

S.M.,

Defendant and Appellant.

G056588

(Super. Ct. Nos. 17DP1325,
17DP1326, 17DP1327, 17DP1328,
and 17DP1329)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Antony C.
Ufland, Judge. Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for
Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre,
Deputy County Counsel, for Plaintiff and Respondent.

* * *

S.M. (father), the father of T.M., age 13; M.M., age 12; L.M., age 9; B.M., age 7; and W.M., age 4, appeals from an order denying him visitation with his children during the pendency of this juvenile dependency proceeding. The court concluded visitation with the father would be detrimental to the children following an Evidence Code section 730 evaluation (730 evaluation) ordered by the trial court at the dispositional hearing. The father contends the order must be reversed because that finding is unsupported by substantial evidence and also because it is inconsistent with the court's earlier observation that it "see[s] a benefit to some sort of visitation."

We review the order under the abuse of discretion standard. We find no abuse.

The record reflects (1) the father did not once visit the children in the nearly two years between his divorce from their mother and the initiation of the dependency action; (2) the eldest three children stated they do not want to visit with him; (3) he refuses to acknowledge responsibility for any of the problems plaguing the family—going so far as to deny culpability for any of the numerous criminal charges he has pleaded guilty to; (4) he is openly resistant to participating in services and suffers from psychological problems including impulsivity and anger management issues; and (5) he is prone to making wild and unsupported accusations of wrongdoing against the children's mother. Those facts are sufficient to demonstrate the court's denial of visitation was not an abuse of discretion.

As for the court's earlier observation about the benefit of "some sort of visitation," it was an informal observation, not a formal ruling, and was not binding. The court remained free to reach a different conclusion when it ultimately ruled on the issue, even in the absence of new or different evidence bearing on the point. In this case, the

730 evaluation generated significant additional evidence bearing on the issue of visitation, which supported the court's ultimate conclusion that requiring the children to visit with the father would not be beneficial to them.

FACTS

On December 5, 2017, the Orange County Social Services Agency (SSA) filed a petition alleging general neglect and failure to protect and supervise the children. The petition alleges that on the night of December 3, and into the morning of December 4, the mother left the children unsupervised in a motel room. The petition also alleges that the mother has a history of mental health issues, and of domestic violence issues with multiple partners, including the father.¹

The petition further alleges that the father has a history of mental health issues, which may interfere with his ability to safely parent his children, as well as a criminal history including convictions or arrests for making criminal threats and stalking. The petition also alleges the father was involved in a serious motorcycle accident approximately 15 years earlier, which may have resulted in a traumatic brain injury. The petition further alleges the father is the subject of four separate restraining orders, including one that benefits the children's mother, issued in March 2016 by the court presiding over the couple's marital dissolution.

Finally, the petition alleges that in March 2016, the mother was awarded sole legal and physical custody of the children in the marital dissolution action, while the father was allowed only professionally supervised visitation. The petition alleges he had

¹ The petition alleges that jurisdiction is appropriate on the basis that the children's maternal half-siblings were the subject of a prior dependency petition in which the court sustained allegations that the mother engaged in physical abuse of one of the half-siblings.

not visited with the children since that time and the three older children reported they do not want visitation with their father.

In connection with the initial hearing, SSA reported that the mother stated she and the children had recently been homeless, and she acknowledged leaving the children alone in a hotel room overnight for up to seven hours. SSA's report also summarized the content of 26 prior referrals for abuse or neglect involving the family commencing in November 2005.

The father was incarcerated at the time the children were taken into protective custody; he was interviewed in jail on December 5. He indicated his incarceration stemmed from a charge that he had made a terrorist threat against Laura's House, a domestic violence shelter. He described himself as being "of French origin," stating that he grew up in the United States but retained French citizenship.² He said he was a business man and record producer with a "vocational history of underwriting loans as a mortgage specialist." He claimed he had an income of \$3,000 per month and that he had been ordered to pay \$2,460 per month in child support.

The father claimed the children were in danger in their mother's custody, and that she had "removed [them] unlawfully from [his] care." He acknowledged he had been ordered by the court presiding over his marital dissolution action to take a 52-week batterers program, but stated he had not complied with the order because he was not guilty and a prior program had not been useful. He also admitted that he had been given the right to supervised visitation with his children but had never taken advantage of it because he could not afford the cost of supervision.

The father stated the mother was a prostitute, that she was addicted to Adderall, heroin and alcohol, and that she receives \$200,000 a year in alimony but blows

² The father later clarified he was born in Rhodesia, to French parents, and was a citizen of France.

it all on drugs and alcohol. He also claimed that during their marriage, the mother frequently beat, harassed and threatened him. He claimed she would wake him up in the middle of the night, demand sex, and that if he did not comply, she would physically assault him with weapons, burn him, and leave various puncture wounds on him. He acknowledged that his criminal arrest and conviction history was mostly true, but claimed he was “forced to plead guilty” to crimes because the mother threatened him with deportation. He also claimed he “lost \$7,000,000 because of her.”

The children were interviewed, and the eldest son, T.M., denied that his mother was ever physically or emotionally abusive and described her as a “good parent.” He stated he once witnessed his father “push” his mother, and claimed his father had disciplined him in the past using a belt and his hand. T.M. also stated their situation would be better if his father paid child support. To the extent the other children were old enough to offer meaningful responses, they all agreed they had sufficient clean clothes and food and that they went to school and had regular medical care. They denied any abuse by their mother and denied any recent contact with their father. The children all wanted to return to their mother’s care.

At the initial hearing on December 6, the court ordered the children detained at Orangewood Children’s Home. The court ordered visitation for the mother, who was at that point in jail on a charge of child neglect, but it did not authorize visitation for the father pending the pre-trial hearing.

In connection with the jurisdiction and disposition hearing, the social worker confirmed the father was subject to a restraining order protecting the mother, and that he had been ordered into the batterer’s program. She also confirmed that a protective order was issued against the father in favor of the employees of Laura’s House, and also that temporary restraining orders had been recently taken out against him for the protection of two unrelated females.

The mother was released from custody on December 8, 2017, and immediately began visiting the children. By early January, she was residing in a confidential domestic violence housing program, was working to secure more permanent housing, and was participating in services. The court ordered the children returned to her custody on January 11, 2018.

Meanwhile, the father sent a letter to SSA in January, making accusations against the children's mother and accusing Laura's House of tax fraud. After he was released from jail in February 2018, he told the social worker he did not agree with the case plan proposed for him and he disputed the majority of the allegations made against him. Thereafter, he continued to make unsubstantiated allegations against the children's mother to the social worker. He made similar accusations to his own mother, who responded that he was lying. The father's mother reported to the social worker that both parents had engaged in violent acts against each other for a long time, and they were both chronic liars.

The social worker also met with the children in February, at which time all three older children stated they did not want to have visitation with their father. The elder daughter, M.M., described their relationship as "awkward and weird," and the younger daughter, L.M., said she did not like visiting with him because he was mean to her mother. The two younger children expressed no opinion on the issue.

In March 2018, the father spoke with the social worker via telephone and declined her invitation to meet in person at her office. He continued his negative claims against the children's mother, and told the social worker he might participate in services, although the cost was an issue. In April, the father attacked the mother in an email sent to the social worker relating the details of a murder that took place in December 2005, and claiming he was going to prove the mother's participation in the crime. When the social worker met with the father that next day at the court house, he denied participating

in any services and questioned the motives of the court and the purpose of the proceeding.

The court held the combined jurisdiction and disposition hearing beginning on April 10, 2018. The father was the only witness who testified. He denied having any mental health issues, denied ever assaulting anyone, denied culpability for any of the several criminal offenses he had been convicted of, and claimed he was “absolutely” willing to participate in services. He acknowledged there were several extant restraining orders against him—one protecting the children’s mother, one protecting the employees of Laura’s House, and one protecting a woman who was associated with the “California Department of Business Oversight.” He claimed the woman had “illegally closed three of [his] businesses.”

The father also testified that his own mother took care of his financial needs. He stated that he made child support payments “every time [the children’s mother] shows up at my mom’s house to extort money from my mother.” He also repeated his unsubstantiated accusations of wrongdoing against the children’s mother.

At the conclusion of the hearing, counsel for SSA, the mother and the children all argued against granting the father visitation with the children. SSA’s counsel pointed out that he had not visited with the children in two years, the older children did not want to visit with him, and there were significant concerns about the father’s mental stability and his apparent “vendetta to destroy” the mother. The mother’s counsel also pointed to the fact the children did not want to see their father, as well as his refusal to accept responsibility for any of his actions. The children’s counsel argued that visitation would be not only immediately detrimental to the children, but it would harm their potential relationship with their father in the long run. As counsel explained: “[u]ntil he’s able to be, I guess, more composed, less impulsive, less blaming, I don’t think that it would be of any benefit at all . . . to my clients to have visitation.”

After sustaining the petition, including the allegations relating to the father's mental health and anger management issues, the court ordered that the children remain in their mother's custody, that she participate in parenting enhancement services, and that she and the three older children all participate in therapy.

With respect to father, however, the court commented that he presented a dilemma: either he was lying in this case when he denied culpability for the various crimes he had pleaded guilty to, or he had lied in the prior cases when he offered those pleas. The court was also concerned about the nature of the criminal conduct he had admitted to engaging in at various times, including making unusual threats, and acts of violence and moral turpitude.

The court explained it did not believe it was obligated to offer parenting services to the father under the circumstances of this case, and it was also unconvinced that services would be of any benefit to him. The court noted "there is a very defiant strike in where he is at, where his head space is at the moment with all of this." With respect to visitation, the court noted that the older children were opposed to visiting with their father, and that it had a "strong concern about what might go on at visitation." The court rejected the father's claim that he had been prevented from visiting in the past, noting: "there was [not] anywhere near enough effort on his part . . . to see those children." However, the court also stated it could "see a benefit to some sort of visitation, allowing the possibility for some sort of visitation with the children for [the father], given the amount of time that it's been since he's had any visitation."

The court then proposed "the possibility of visitation . . . in a strictly controlled situation, with armed personnel in case something were to go wrong, and a strict no-discussion order in place. That's where I'm at."

The court also stated it was inclined to order a "730 evaluation" of the father to assess whether he would be able to benefit from parenting services if they were

offered. Counsel for SSA then suggested that no visitation be ordered for the father until the court received the results of that evaluation, and until the children had also commenced their own therapy. The court agreed. It ordered the evaluation and stated that it would defer any decision regarding visitation until after it received the results of that evaluation.

The court appointed Martha Rogers, PhD., to perform the evaluation. Rogers based her report on her review of SSA's reports and a questionnaire filled out by the father; her interview with the social worker; and her extensive in-person interview, and in-person testing, with the father.

Among other things, Rogers concluded the father "suffers from a personality disorder including paranoid and antisocial features . . . including impulsivity," and that he has a "high propensity to be inconsistent or place himself in an unusually favorable light, to be prone to project blame and . . . to harass or intimidate his ex-wife or others." Rogers also opined the father "does not appear to be interested in services nor willing to cooperate with service providers," and she concluded it was unlikely he would benefit from a referral for medication. She found "no indications . . . that would suggest that he would accept an evaluation or adhere to a medication regimen. If anything, he is very impulsive and exhibits limited willingness and/or ability to inhibit inappropriate responses."

With respect to the father's interaction with the children specifically, Rodgers stated that while he had an "extremely low" score on the CAPI test for abuse prediction, that result suggested "an individual who *perceives himself* as a well-functioning parent." (Italics added.) She also noted that the most valid measure of parental capacity for abuse is past history, and there was no evidence he had engaged in past physical or sexual abuse of the children. But Rogers also stated that "[a] major issue seems to be to what extent he could control himself and refrain from badmouthing [his ex-wife] if he has contact with the children." Rogers expressed concern about "why [the

father] has not seen his children for several years: he was permitted monitored visits but apparently he preferred to neglect his relationships than to accept the structure for visitation.”

After Rogers concluded her evaluation and filed her report with the court, the court held a hearing to address the remaining issues pertaining to the provision of services or visitation rights for the father. Once again, counsel for SSA, the mother, and the children all argued against any visitation. The children’s counsel emphasized “[m]y clients are fearful of the father and . . . the 730 evaluation supports a basis for that.”

The father’s counsel argued that the evaluation did not support the denial of visitation because it concluded that father had a low propensity for child abuse, and thus it did not “appear clearly concrete that any finding was made that [visitation] would be [detrimental].”

The court ordered its prior denial of visitation to remain in effect. The court explained it believed the father “has a very tenuous relationship with reality,” and that he “has very strong beliefs with regard to the mother . . . that have no basis in reality.” The court noted the father is “just unstable with regard to outbursts and statements that are just not based in reality,” and that while such outbursts may be benign in some cases, it did not believe they were in this one. Instead, the court believed “his inappropriate responses and comments to and around his children . . . may be dangerous and detrimental to their well being. As indicated previously, they are fearful of him.”

DISCUSSION

When the juvenile court removes a child from parental custody, and reunification services are ordered for the parent, the general rule is that visitation must be granted unless there is a finding it would be detrimental to the child. (Welf. and Inst. Code, § 362.1, subd. (a) [“any order placing a child in foster care, and ordering reunification services, shall provide . . . [¶] . . . for visitation”]; *In re Mark L.* (2001)

94 Cal.App.4th 573, 580.) An order denying visitation on the basis of detriment is reviewed under the substantial evidence test. (*In re A.J.* (2015) 239 Cal.App.4th 154, 160.)

However, as SSA points out, that rule is not applicable here because the court's dispositional order maintained the children in the mother's custody and ordered no reunification services for the father. Under such circumstances, as the father concedes, a visitation order is discretionary, rather than obligatory. (*In re J.N.* (2006) 138 Cal.App.4th 450, 457 ["when the court does not order reunification services, it '*may continue to permit*' the parent to visit the child unless it finds that visitation would be detrimental"].) Thus, we review the court's denial of visitation under the abuse of discretion standard, rather than the substantial evidence standard. (*Id.* at p. 459.)

In his reply brief, the father implicitly admits the abuse of discretion standard is applicable, but claims it does not matter which standard applies because the trial court "ma[de] its decision based on detriment." Thus, he contends that no matter which standard applies, we must reverse if the evidence is insufficient to support that specific reasoning. We disagree.

Contrary to the father's contention, we review the court's decision, rather than its specific reasoning. "“No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.”” (*People v. Zapien* (1993) 4 Cal.4th 929, 976.)

Further, "[a]n abuse of discretion occurs only if the reviewing court, considering the applicable law and all of the relevant circumstances, concludes that the trial court's decision exceeds the bounds of reason and results in a miscarriage of justice." (*Orange Catholic Foundation v. Arvizu* (2018) 28 Cal.App.5th 283, 292.) And

when we apply the abuse of discretion standard, “we resolve all evidentiary conflicts in favor of the judgment and determine whether the court’s decision “falls within the permissible range of options set by the legal criteria.”” (Hirshfield v. Schwartz (2001) 91 Cal.App.4th 749, 771.) Given those stringent requirements, “[t]he abuse of discretion standard warrants that we apply a very high degree of deference to the decision of the juvenile court.” (In re J.N., supra, 138 Cal.App.4th at p. 459.)

When we apply that deference here, we must affirm the trial court’s decision. As the father himself admits in his opening brief, the mother was awarded full legal and physical custody of the children in March 2016, and he had not visited them even once since that time. He also admits he has criminal convictions for assaultive conduct and has numerous restraining orders against him, but denies that any of that is his fault. He will not participate in services and has not complied with an order that he participate in a batterer’s treatment program. As the psychologist who performed his 730 evaluation points out, he perceives himself as a good parent, “but he also tends to positively enhance his account of his parenting skills as well as his overall adjustment.” In reality, he blames others for the many problems in his life. He is impulsive and suffers from some degree of paranoid and antisocial personality features. He cannot refrain from making wild accusations about the children’s mother.

Significantly, to the extent the trial court was inclined to order visitation for the father at all, it considered imposing a requirement that the visitation be conducted only in the presence of *armed personnel*. To suggest the trial court abused its discretion by declining to put these young children into that fraught situation is a self-defeating argument.

The three older children have been ordered into therapy. It is certainly possible that with the benefit of therapy, other improvements in their home life, and the passage of time, these children may become more receptive, and also more able, to interact with their father. It is also possible that the father will decide to make changes in

his own life. Having said that, at this point, based on this evidence, we find no error in the trial court's denial of visitation.

DISPOSITION

The order is affirmed.

GOETHALS, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.